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OCT 27 2008

OFFICE OF PETITIONS

In re Application of
Jan Trebesius
Application No. 09/869,550
Filed: January 8, 2002
Attorney Dkt. No: (H) 011CP0235USP

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ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed July 9, 2008.

The petition to withdraw the holding of abandonment is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This above-identified application was held abandoned for failure to timely file a response to a final Office Action which was mailed on May 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. A reply in the form of an RCE, amendment, abstract, specification, request for three month extension of time and a credit card authorization was submitted. A Notice of Requiring Excess Claim Fees was mailed on November 30, 2005. Accordingly, this application became abandoned on November 4, 2005. A Notice of Abandonment was mailed on September 20, 2007. A petition filed under 37 CFR 1.181 was dismissed on May 19, 2008.

Petitioner asserts that a reply to the final Office Action was timely submitted on November 3, 2005. Petitioner maintains that a general authorization to charge deposit account 11-0665 was submitted on filing. Thus petitioner maintains the \$10.00 shortage should have been charged to the deposit account. Petitioner has provided evidence that \$10.00 was present in the deposit account in November 2005.

Although petitioner has provided an explanation as to the delay in submitting the first petition to withdraw the holding of abandonment, petitioner has failed to indicate why a response to the Notice Requiring Excess Claim Fees mailed November 30, 2005 was not timely submitted. The time for petitioner to make arguments that a deposit account was available to charge any shortfall in the fees was upon receipt of the Notice Requiring Excess Claim Fees. The failure to respond to the Notice would not allow for the withdrawal of the holding of abandonment.

To the extent petitioner contends that the Notice Requiring Excess Claim Fees was not received, petitioner must establish non receipt.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner. The statement should also describe the system used for recording an Office action received at the correspondence address of record and establish that the docketing system was sufficiently reliable;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the master docket for the firm docket record where the nonreceived Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement. If no master docket exists, the practitioner should so state and provide other evidence such, as but not limited: to the application file jacket, incoming mail log; calendar; reminder system or individual docket record for the application in question

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

If petitioner is unable to establish non receipt of the Notice, petitioner should consider filing a petition under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charles R. Goy

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Petitions Attorney
Office of Petitions